



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 29, 2011

Officer Matthew Sandoval
Chicago Police Department
3510 S. Michigan Avenue
Chicago, Illinois 60653

RE: FOIA Pre-Authorization Request - 2011 PAC 14360

Dear Officer Sandoval:

We have received and reviewed the written notice from the Chicago Police Department (CPD) of its intention to deny disclosure of certain information pursuant to section 7(1)(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(f) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010). Specifically, on May 6, 2011, [REDACTED] submitted a FOIA request to CPD seeking copies of all records relating to former Mayor Richard M. Daley's future security protection. On May 20, 2011, CPD submitted its written notice to this office seeking to withhold a memorandum from disclosure pursuant to section 7(1)(f). CPD provided us with a copy of the memorandum on June 9, 2011.

Section 7(1)(f) of FOIA exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body."

The section 7(1)(f) exemption is intended to encourage government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. *Harwood v. McDonough*, 344 Ill. App. 3d 242, 248 (1st Dist. 2003). "[T]he deliberative process privilege protects pre-decisional, deliberative communications that are part of an agency's decision-making process." *Parmelee v. Camparone*, No. 93 C 7362, 1998 WL 704181 at *1 (N.D. Ill. October 1, 1998).

DETERMINATION

CPD's request to withhold the memorandum is **approved** in part and **denied** in part. The memorandum furnished to this office by CPD consists of preliminary recommendations and factual material that supports those recommendations. Federal courts have acknowledged that in certain instances, when a record contains both preliminary recommendations and factual material, the factual material in the memorandum is not covered by the deliberative process privilege and therefore, must be disclosed.¹ *Parmelee*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill. October 1, 1998) at *2. In addressing the disclosure of factual material contained in a memorandum that is part of the decision-making process, the Court concluded as follows:

[T]he privilege has been extended to cover factual material, including witness statements, where the material is so "inextricably connected to the deliberative material that disclosure of the factual material would reveal the agency's decision-making processes." *Nadler v. Dept. of Justice*, 955 F.2d 1479, 1491 (11th Cir. 1992); *Ryan v. Dept. of Justice*, 617 F.2d 781, 791 (D.C.Cir. 1980). Essentially, if the factual material may be reasonably segregated from the deliberative material, the factual portion must be produced. *Parmelee*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill. October 1, 1998) at *2.

This office has previously determined that information based on factual and numerical data does not fall within the scope of section 7(1)(f). Thus, in 2010 PAC 10334 (Ill. Att'y Gen. PAC Pre-Auth dl10334, issued December 21, 2010), we concluded that email messages that were based solely on numerical data were not exempt under section 7(1)(f). In this matter, the recommendations in the memorandum are supported by the factual material, but that material is not "inextricably connected" to the portion of the memorandum that contains recommendations by CPD. Therefore, CPD *has not* met its initial burden of demonstrating that the memorandum is exempt in its entirety from disclosure under section 7(1)(f).

Accordingly, CPD must disclose the memorandum to Mr. Jones. CPD may, however, redact the portion of the memorandum that contains CPD's recommendations about the former Mayor's future security protection pursuant to section 7(1)(f). If you have any

¹ Illinois courts have recognized that because Illinois' FOIA statute is based on the Federal FOIA statute, decisions construing the latter, while not controlling, may provide helpful and relevant precedents in construing the State Act. *Margolis v. Directors, Illinois Dep. of Revenue*, 180 Ill. App. 3d 1084, 1087, *appeal denied*, 126 Ill. 2d 560 (1989). Therefore, we find the analysis set forth in *Parmelee* relevant to our section 7(1)(f) analysis.

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questions, you may contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Very truly yours,

Matthew C. Rogina by AC

MATTHEW C. ROGINA
Assistant Attorney General
Public Access Bureau

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Via Electronic Mail

cc:

